



Plaintiff filed a reply brief on June 27, 2012, explaining that its motion should not be construed as an admission that the lease is valid and enforceable. (Doc. No. 19.)

Rule 41(a)(2) provides that an action may be dismissed on the plaintiff's request after the defendant serves an answer or motion for summary judgment only by court order, on terms that the court considers proper. The rule prohibits dismissal where a defendant has pleaded a counterclaim unless the counterclaim can remain pending for independent adjudication.

Because Rule 41(a)(2) permits dismissal only when a defendant's counterclaim can remain pending for adjudication, the Court must determine if Defendants' declaratory judgment counterclaim can be adjudicated independent of Plaintiffs' claims. For a declaratory judgment counterclaim to survive independently, "an actual controversy must be extant at all stages of review, not merely at the time the [counterclaim] is filed." Preiser v. Newkirk, 422 U.S. 395, 401 (1975). Defendants' counterclaim seeks a declaration that the oil and gas lease is valid, continuing, and enforceable. The Declaratory Judgment Act permits courts to "declare the rights and other legal relations of any interested party" only "[i]n the case of an actual controversy." 28 U.S.C. § 2201(a). An actual controversy refers to a dispute that is "definite and concrete, touching the legal relations of parties having adverse legal interests," and must be "real and substantial." MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007) (quoting Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937)).

If Plaintiffs' claims for declaratory relief, injunctive relief, and damages are dismissed, then there would be no actual controversy between the parties. There would be no "real and substantial" dispute regarding the validity of the lease. Thus, the Court would not be able to adjudicate Defendants' counterclaim independent of Plaintiffs' claims. Therefore, absent a

stipulation of dismissal signed by all parties pursuant to Rule 41(a)(1)(A)(ii), the Court cannot dismiss the action at this stage.

**ACCORDINGLY**, on this 16<sup>th</sup> day of August 2012, **IT IS HEREBY ORDERED**  
**THAT** Plaintiffs' motion for voluntary dismissal (Doc. No. 17) is **DENIED**.

S/ Yvette Kane  
Yvette Kane, Chief Judge  
United States District Court  
Middle District of Pennsylvania